

Message Text

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ACTION DLOS-09

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TO SECSTATE WASHDC 6636
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C O N F I D E N T I A L SECTION 01 OF 04 BERLIN 00809

E.O.11652: GDS
TAGS: PLOS, GE
SUBJECT: GDR COMMENTS ON INFORMAL COMPOSITE
NEGOTIATING TEXT

REFS: (A) BERLIN 175 (B) STATE 7962

1. SUMMARY: EMBOFF MET WITH DEPUTY
HEAD OF THE LAW AND TREATY DEPARTMENT, MFA, GUNTER
GOERNER, FOR A LENGTHY DISCUSSION OF GDR VIEWS ON
NEEDED AMENDMENTS TO THE INFORMAL COMPOSITE
NEGOTIATING TEXT (ICNT). AREA OF MOST CONCERN TO GDR
WAS RIGHTS OF GEOGRAPHICALLY DISADVANTAGED STATES
(GDS) WITH RESPECT TO THE LIVING RESOURCES IN THE
EXCLUSIVE ECONOMIC ZONE. GOERNER PROVIDED
EMBOFF WITH COPY OF A GDR PROPOSAL FOR A REVISION
OF ARTICLE 70 (RIGHTS OF GEOGRAPHICALLY DISADVANTAGED
STATES) AND INDICATED HE WOULD LIKE U.S. VIEWS ON
APPROACH TAKEN PRIOR TO BEGINNING OF LOS CONFERENCE
AT THE END OF MARCH. GDR SIDE SHOWED STRONG INTEREST
IN CLOSE CONSULTATIONS WITH THE U.S. ON LOS ISSUES
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AND ARRANGEMENTS HAVE BEEN MADE FOR A FURTHER MEETING
IN EAST BERLIN IN EARLY MARCH. END SUMMARY.

2. EMBOFF MET JAN. 31 FOR ALMOST THREEHOURS
WITH DR. GOERNER FOR DETAILED DISCUSSION OF ICNT.
GOERNER BEGAN BY SAYING THAT THE GDR GENERALLY AGREES
WITH THE POINTS MADE BY AMBASSADOR RICHARDSON IN HIS

JANUARY 18 SPEECH. IN GENERAL THE GDR BELIEVES THAT THE ICNT IS A GOOD BASIS FOR NEGOTIATION BUT THERE ARE CERTAIN AREAS WHERE AMENDMENTS ARE ESSENTIAL. FOR THE GDR THIS WOULD AMOUNT TO NO MORE THAN 25 ARTICLES ALTOGETHER. HOWEVER, SOME OF THE CHANGES WHICH THE GDR SEEKS ARE OF VITAL IMPORTANCE TO IT.

3. NEGOTIATING ATMOSPHERE. GOERNER SAID THAT HE FELT THAT THE ATMOSPHERE DURING THE DECEMBER NEW YORK MEETING HAD BEEN CONSTRUCTIVE AND THAT DR. WUENSCHKE HAD FOUND THE RECENT MEETING IN GENEVA POSITIVE AS WELL. GOERNER BELIEVES THAT CONFERENCE PARTICIPANTS ARE READY FOR COMPROMISE, THAT THE CLIMATE HAS BECOME BETTER AND THAT THERE IS A GOOD CHANCE THAT ISSUES CAN BE RESOLVED. HE NOTED THAT SOME PARTICIPATING COUNTRIES ARE CONSIDERING SUBMITTING A GREAT MANY TECHNICAL AND MINOR AMENDMENTS TO THE ICNT. THE GDR IS OPPOSED TO THIS AND BELIEVES THAT ATTENTION SHOULD BE CONCENTRATED ON A FEW MAIN POINTS FOR THE TIME BEING. EMBOFF SUMMARIZED U.S. VIEWS IN GENERAL TERMS DRAWING ON AMBASSADOR RICHARDSON'S JANUARY 10 IPS INTERVIEW AND JANUARY 18 SPEECH.

4. GOERNER PROCEEDED TO REVIEW THE MAIN AREAS OF GDR CONCERNS IN THE ICNT. HE EMPHASIZED THAT THE GDR POSITION FOR THE MARCH SESSION WAS NOT YET CONFIDENTIAL

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COMPLETED AND WOULD BE MODIFIED IN LIGHT OF THE NEW YORK INTERSESSIONAL MEETING. GOERNER WAS CLEARLY, HOWEVER, READING FROM DETAILED DRAFT INSTRUCTIONS, WHICH APPEARED TO CONTAIN AN ARTICLE BY ARTICLE ANALYSIS.

5. STRAITS. GOERNER EXPRESSED CONCERN ABOUT ARTICLE 44 (DUTIES OF STATES BORDERING STRAITS), OBSERVING THAT AS THE RIGHTS OF COASTAL STATES INCREASED SO SHOULD THEIR RESPONSIBILITIES. THE GDR IS CONSIDERING AN AMENDMENT TO ARTICLE 44 WHICH WOULD MAKE STATES BORDERING STRAITS LIABLE FOR DAMAGE INCURRED AS THE RESULT OF ILLEGAL INTERFERENCE WITH TRANSIT PASSAGE. HE ALSO SAID THAT THE GDR WAS CONSIDERING SOME "MINOR" AMENDMENTS TO SECTION 3, SUBSECTION B REGARDING GOVERNMENT SHIPS OPERATED FOR COMMERCIAL PURPOSES. HE DID NOT INDICATE THE NATURE OF THESE AMENDMENTS. EMBOFF COMMENTED THAT THERE WAS NO SUCH THING AS A "MINOR" AMENDMENT TO A STRAITS ARTICLE. GOERNER AGREED BUT SAID THAT HE BELIEVED OTHER DELEGATIONS WOULD BE SUBMITTING AMENDMENTS TO THESE ARTICLES AND, IF SO, THE GDR WOULD AS WELL. THE

IMPLICATION WAS THAT IF THERE WERE NO OTHER AMENDEMENTS PROPOSED, THE GDR WOULD NOT INSIST ON ITS.

6. ARCHIPELAGOS. GOERNER SAID THE GDR FEELS THAT ARTICLE 49 (JURIDICAL STATUS OF ARCHIPELAGIC STATES) SHOULD BE STRENGTHENED TO PROVIDE CLEARLY FOR FREEDOM OF SHIPPING WITHIN THE ARCHIPELAGO. AS ARTICLE 53 (RIGHT OF ARCHIPELAGIC SEA LANES PASSAGE) LEAVES IT TO THE DISCRETION OF THE ARCHIPELAGO STATE TO ESTABLISH SUCH SEA LANES OR NOT, AN ARCHIPELAGO STATE MAY ESTABLISH NO SEA LANES THUS SUBJECTING THE ENTIRE ARCHIPELAGOS TO THE REGIME OF INNOCENT PASSAGE. THIS WOULD BE UNSATISFACTORY.

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7. ECONOMIC ZONE. GOERNER STATED THAT THE GDR IS NOT SATISFIED WITH PART 5 (EXCLUSIVE ECONOMIC ZONE) AS IT IS NOT SURE THAT HIGH SEAS RIGHTS ARE ADEQUATELY GUARANTEED. THE GDR IS CONSIDERING AN AMENDMENT TO ARTICLE 55 (SPECIFIC LEGAL REGIME OF THE EXCLUSIVE ECONOMIC ZONE) TO THE EFFECT THAT NO STATE COULD CLAIM SOVEREIGNTY OVER ANY PART OF THE ECONOMIC ZONE. THE GDR FEARS THAT THE EXTREMIST (TERRITORIALIST) NATIONS COULD EXPLOIT THE LACK OF CLARITY IN THIS PART TO THEIR ADVANTAGE AND EXPAND THEIR JURISDICTION.

8. MUCH OF THE MEETING CONSISTED OF A DETAILED

EXPOSITION BY GOERNER ON THE PROBLEMS OF THE RIGHT
OF THE GDS TO ACCESS TO THE LIVING RESOURCES IN THE
ECONOMIC ZONES OF OTHER STATES. HE STATED, INTER ALIA,
THAT A NUMBER OF COASTAL STATES HAD EMPLOYED THE
LANGUAGE OF THE ICNT IN THEIR DOMESTIC LEGISLATION AND
THAT IT IS THEREFORE POSSIBLE TO SEE HOW THE TEXT
WOULD OPERATE IN PRACTICE. THE NET
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AFFECT, HE SAID, IS TO GIVE NATIONS SUCH AS THE GDR
EFFECTIVELY NO RIGHTS AT ALL. IN THIS DISCUSSION
GOERNER CLEARLY HAD IN MIND THE GDR'S RECENT EXPERIENCE
WHERE IT RECEIVED ZERO QUOTA IN THE US FISHING ZONE.
HE NOTED THAT FOR THE GDR THE TOTAL AMOUNT OF FISH
CAUGHT WAS INSIGNIFICANT (APPROXIMATELY 250,000 TONS
ANNUALLY) COMPARED TO THAT HARVESTED BY LARGE
FISHING STATES. NEVERTHELESS, THIS INDUSTRY IS
EXTREMELY IMPORTANT TO THE GDR: IT EMPLOYS MANY PEOPLE
AND LARGE INVESTMENTS HAVE BEEN MADE IN IT. IF
THE FISH MUST BE BOUGHT INSTEAD OF HARVESTED,
THIS WILL CONSTITUTE A FURTHER DRAIN ON LIMITED FOREIGN
CURRENCY. GOERNER DESCRIBED THE PROBLEM AS OF "VITAL
INTEREST TO THE GDR" AND STATED THAT THE GDR
WOULD SEEK TO HAVE AMENDMENTS TO THIS PART OF THE TEXT.

9. GOERNER GAVE EMBOFF A COPY OF A SUGGESTED GDR
REVISION OF ARTICLE 70 (TEXT BEING REPEATED SEPTTEL).
HE STATED THAT A SOMEWHAT SIMILAR TEXT HAD BEEN GIVEN
TO A MEMBER OF THE US DELEGATION AT AN EARLIER MEETING.
THE ESSENCE OF THE GDR PROPOSAL IS THAT DEVELOPED GDS
HAVE PREFERENTIAL RIGHTS TO THE SURPLUS FISH STOCKS
IN THE ECONOMIC ZONES OF THOSE DEVELOPED COASTAL
STATES OFF WHOSE COASTS THEY HAVE HABITUALLY
FISHED. GOERNER NOTED THAT IN AN EARLIER DRAFT,
THE ARTICLE HAD REFERRED TO THE RIGHT OF THE GDS
TO ACCESS TO THE LIVING RESOURCES IN THE ECONOMIC
ZONES OF THE OTHER STATES OF THE SAME REGION OR
SUB-REGION. GOERNER STATED THAT THERE WAS STRONG
OPPOSITION TO THE USE OF REGIONAL APPROACHES, PARTICULARLY
BY THE US, AND OUT OF DEFERENCE TO THE US THE GDR HAD
DROPPED THIS ELEMENT AND SUBSTITUTED A "TRADITIONAL
FISHING RIGHTS" APPROACH. GOERNER REQUESTED THE
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COMMENTS AND VIEWS OF THE US ON THE APPROACH REFLECTED
IN THE GDR'S DRAFT AMENDMENT.

10. GOERNER NOTED THAT THE GDR PROPOSAL CONTAINS A DEFINITION OF A GDS, AN ISSUE WHICH THE LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGES GROUP HAD AVOIDED AS TOO CONTROVERSIAL AND BECAUSE A NARROW DEFINITION WOULD OBVIOUSLY REDUCE THE SIZE OF THE GROUP. THE GDR-PROPOSED DEFINITION PROVIDES THAT, IN ORDER TO QUALIFY AS GEOGRAPHICALLY DISADVANTAGED, A COASTAL STATE MUST BE UNABLE TO CLAIM AN ECONOMIC ZONE OR ITS ECONOMIC ZONE MUST BE LESS THAN 30 PERCENT OF THE AREA IT COULD HAVE CLAIMED IF IT WAS ABLE TO EXTEND ITS ECONOMIC ZONE TO THE MAXIMUM. IT IS CLEAR FROM GOERNER'S REMARKS THAT THE 30 PERCENT FIGURE HAD BEEN SELECTED SO AS TO ENSURE THE INCLUSION OF SOME OF THE NORTHERN EUROPEAN STATES SUCH AS POLAND. GOERNER SAID THAT THE GDR COULD QUALIFY AS A GDS WITH A FIGURE AS LOW AS 15 PERCENT.

11. GOERNER STATED THAT ARTICLE 61 (CONSERVATION OF LIVING RESOURCES) NEEDS TO BE STRENGTHENED. THE GDR IS CONCERNED THAT THE COASTAL STATES HAVE NOT THE SOLE RIGHT TO DETERMINE WHETHER A SURPLUS OF FISH EXISTS. GOERNER SUGGESTED THAT THE INTERNATIONAL FISHERIES ORGANIZATION MIGHT BE EMPLOYED TO DETERMINE MAXIMUM SUSTAINABLE YIELD.

12. GOERNER SUGGESTED THAT THE FINAL RESOLUTION OF THE LL/GDS ISSUE MIGHT CONSIST OF AN APPROACH IN WHICH THE LANDLOCKED STATES WOULD BE GIVEN REVENUE SHARING RIGHTS TO THE MINERAL RESOURCES OF THE ECONOMIC ZONE AND THE GDS WOULD HAVE RIGHTS TO THE SURPLUS LIVING RESOURCES. HE STATED THAT THE GDR

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WOULD SUPPORT VIRTUALLY ANY PROPOSAL ON RIGHTS FOR DEVELOPING COUNTRY GDS. HE OBSERVED THAT ONE THING THE GDR DID NOT WISH TO SEE WAS THE EXPANSION OF THE NUMBER OF DISTANT WATER FISHING STATES TO INCLUDE SUCH NATIONS AS SWITZERLAND AND AUSTRIA. GOERNER REMARKED THAT IN THE PAST THE US HAD MADE NO CONCRETE PROPOSALS ON THESE ISSUES AND THE GDR WOULD LIKE TO KNOW WHAT THE US VIEWS ARE AND WHAT TYPE OF SOLUTION THE US COULD SUPPORT. HE SPECIFICALLY ASKED FOR CONSULTATIONS ON THIS ISSUE PRIOR TO THE MARCH CONFERENCE IN GENEVA. HE CONCLUDED HIS DISCUSSION OF THIS ISSUE BY STRESSING THAT FOR THE GDR THESE PROPOSALS WERE NOT A BARGAINING POSITION BUT WERE OF FUNDAMENTAL IMPORTANCE.

13. EMBOFF DID NOT COMMENT ON THE SPECIFIC POINTS RAISED BUT DID OBSERVE THAT THE US WAS VERY CONSCIOUS OF THE IMPORTANCE OF THE LL/GDS ISSUE AND MUCH GREATER ATTENTION WAS BEING GIVEN TO IT THAN MAY HAVE BEEN THE CASE IN THE PAST. EMBOFF ALSO AGREED TO SEEK USG VIEWS ON THIS QUESTION AND ON THE GDR
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IDEAS ON ARTICLE 70 AND TO ARRANGE FOR CONSULTATIONS BEFORE THE MARCH LOS CONFERENCE.

14. CONTINENTAL SHELF. GOERNER STATED THAT THE GDR WOULD PREFER TO SEE THE OUTER LIMIT OF THE CONTINENTAL SHELF (ARTICLE 76) THE SAME AS THE ECONOMIC ZONE (I.E. 200 MILES). AS A COMPROMISE, THE GDR COULD AGREE TO AN OUTER LIMIT OF THE CONTINENTAL SHELF AT THE 500 METER ISOBATH. HE STATED THAT THE GDR COULD NOT ACCEPT THE "OUTER EDGE OF THE CONTINENTAL MARGIN" AS A DEFINITION AS THIS REDUCES THE SIZE OF THE DEEP SEABED AREA.

15. SEMI-ENCLOSED SEAS. GOERNER ARGUED THAT THE DEFINITION OF ENCLOSED OR SEMI-ENCLOSED SEAS IN ARTICLE 122 WAS TOO BROAD BECAUSE IT INCLUDED THE MEDITERRANEAN. THE GDR IS CONCERNED THAT THERE WILL BE A TREND TO REDUCE FREEDOM OF NAVIGATION IN SEMI-ENCLOSED SEAS IN THE FUTURE AND DID NOT WANT TO SEE THIS OCCUR IN THE MEDITERRANEAN. GOERNER DID NOT HAVE ANY ALTERNATIVE DEFINITION

BUT SAID THAT THE GDR WAS WORKING ON ONE.

16. DEEP SEABEDS. THERE WAS A RATHER GENERALIZED DISCUSSION OF THE DEEP SEABED ISSUES IN WHICH GOERNER'S MAIN POINT WAS THAT THE GDR WAS NOT SATISFIED WITH MANY ASPECTS OF THE ICNT. BASICALLY, THE GDR WANTS TO SEE THE RIGHTS OF STATES AND JURIDICAL PERSONS TO EXPLORE AND EXPLOIT THE RESOURCES OF THE SEABED MADE ABSOLUTELY CLEAR AND DOES NOT WANT THE SEABED AUTHORITY GIVEN THE RIGHT TO EXCLUDE A STATE. REGARDING ARTICLE 151 (FUNCTIONS OF THE AUTHORITY), GOERNER SUGGESTED THAT PARA ONE BE CONFIDENTIAL

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AMENDED TO MAKE CLEAR THAT ACTIVITIES IN THE AREA ARE BEING CARRIED OUT BY STATES UNDER THE CONTROL OF THE AUTHORITY, THAT PARA TWO (II) SHOULD BE AMENDED TO DELETE THE LAST FOUR AND A HALF LINES INCLUDING ALL WORDS FOLLOWING THE WORD "STATES," AND THAT PARA 7 BE AMENDED TO LIMIT THE POWERS OF THE AUTHORITY TO CARRY OUT MARINE SCIENTIFIC RESEARCH ONLY AS IT RELATES TO SEABED RESOURCES. GOERNER STATED THAT THE GDR'S CONCERN WAS SO THAT UNDER EXISTING LANGUAGE THE POWERS OF THE AUTHORITY COULD BE INTERPRETED TO EXTEND INTO THE WATER COLUMN AND THE AUTHORITY MIGHT INTERFERE WITH OTHER ACTIVITIES. HE MENTIONED SPECIFICALLY SUBMARINES. TIME DID NOT PERMIT MORE EXTENSIVE DISCUSSION OF OTHER ASPECTS OF THE DEEP SEABED ISSUES AND GOERNER SUGGESTED THAT FURTHER DISCUSSION BE HELD, PARTICULARLY ON RESOURCE POLICY, WHEN HE RETURNS FROM NEW YORK AND WHEN DR. WUENSCHKE CAN ALSO PARTICIPATE.

17. COMMENT; IT WAS CLEAR THAT THE GDR ATTACHES IMPORTANCE TO CONSULTATIONS WITH THE U.S. ON LOS ISSUES AND WOULD WELCOME FURTHER OPPORTUNITIES FOR DISCUSSION. GOERNER SAID THAT HE RECOGNIZED THAT THE U.S. DELEGATION WAS EXTREMELY BUSY AND THAT DETAILED BILATERAL CONSULTATIONS DURING THE CONFERENCE WERE NOT ALWAYS PRACTICAL. HE SAID THAT THE GDR DELEGATION ITSELF SPENT MUCH OF ITS TIME NEGOTIATING WITH OTHER MEMBERS OF THE LL/GDS GROUP.

18. WE PRESUME THAT IN A NUMBER OF CASES THE CONCERNS EXPRESSED BY GOERNER ARE, IN FACT, REFLECTIONS OF EASTERN EUROPE AND THE USSR. HOWEVER, THE QUESTION RELATING TO ACCESS TO THE ECONOMIC ZONE LIVING RESOURCES IS A MATTER OF GENUINE NATIONAL INTEREST IN THE GDR. THE EMBASSY URGES THAT BILATERAL DISCUSSIONS CONTINUE AND IN THAT CONNECTION

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REQUESTS THAT IT BE PROVIDED WITH GUIDANCE ON THE
ISSUES RAISED BY GOERNER, AND IN PARTICULAR,
ON THE GDS QUESTION PRIOR TO EMBOFF'S NEXT MEETING
WITH GOERNER (MARCH 2). END COMMENT. BOLEN

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